IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

WSOU INVESTMENTS, LLC d/b/a, BRAZOS LICENSING AND DEVELOPMENT ***Plaintiff*,** **v.** **GOOGLE LLC,** ***Defendant*.**	§ § § § § § § § § § § § §	**Civil Case No. 6:20-cv-572-ADA** **JURY TRIAL DEMANDED**

DEFENDANT GOOGLE LLC'S RESPONSE TO PLAINTIFF'S NOTICE OF SUPPLEMENTAL AUTHORITY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT OF NO INVALIDITY OF U.S. PATENT NO. 8,041,806 UNDER 35 U.S.C. § 101

On October 5, 2022, Plaintiff WSOU Investments, LLC, filed a notice of supplemental authority that allegedly supports its motion for summary judgment under 35 U.S.C. § 101. (Dkt. 131). Defendant Google LLC hereby responds to that notice.

WSOU's notice refers to *Cooperative Ent., Inc. v. Kollective Tech., Inc.*, 2022 WL 4488902 (Fed. Cir. 2022). There, the Federal Circuit held that the challenged claims covered two inventive concepts: (i) using a dynamic peer-to-peer (P2P) network with multiple peer nodes that consume the same content while configured to communicate outside content distribution networks (CDN); and (ii) using trace routes in content segmentation. *Id.* at *3. The court emphasized that the claims "limit[ed] the *structural* and functional relationship between the P2P network and the content delivery server" by reciting a "multiplicity of peer nodes … distributed outside controlled networks," and the "specification explains how [the] structure is different from and improves upon the prior art, *especially the structural limitation* that the peer nodes consuming the same content

be distributed outside a controlled network." *Id*. (emphasis added).

Kollective involved claims directed to improving computer functionality itself, not using computers as tools for implementing an abstract idea (*i.e.*, delivering targeted content to users based on information about user behavior, as claimed in the '806 patent). The '806 patent explains that the recited "component[s] are described … *primarily in terms of their function*" because of "broad range of possible implementations." '806 patent at 7:3-8 (emphasis added); *see id.* at 5:26-30 ("[T]he present invention is not limited to any particular types of equipment, protocols, or operation.").

By contrast, this Court's recent decision *Broadband iTV, Inc., v. Amazon.com, Inc.*, 2022 WL 4703425 (W.D. Tex. Sept. 30, 2022), addressed claims directed to collecting information about a user's viewing history and using that information to present content. As this Court recognized, the "Federal Circuit has held patents directed to collecting information about a user's past behavior and providing content based on that information to be abstract and ineligible under § 101." *Id.* at *11. This Court also noted that "[m]any courts have held patents directed to collecting information about a user's past behavior and providing content based on that information to be abstract and ineligible." *Id*. at *12. This Court then explained that "functional claiming does not provide an inventive concept." *Id.* at *15.

Date: October 14, 2022

Respectfully submitted,

/s/ Tharan Gregory Lanier with permission, by Michael E. Jones

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